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Before The
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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Federal Communications Commission
Office of Secretary

In The Matter Of)
)
Rulemaking To Amend Parts 1, 2, 21,)
and 25 Of the Commission's Rules to)
Redesignate the 27.5-29.5 GHz Frequency)
Band, to Reallocate the 29.5-30.0 GHz)
Frequency Band, to Establish Rules and)
Policies for Local Multipoint)
Distribution Service and for Fixed)
Satellite Services)

CC Docket No. 92-297

To The Commission:

**REPLY COMMENTS OF DIGITAL BROADCAST CORPORATION TO
THE COMMISSION'S NOTICE OF PROPOSED RULEMAKING**

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May 6, 1997

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INTRODUCTION

Digital Broadcast Corporation ("DBC") applauds the vast majority of the Commission's proposals in its Rulemaking regarding Local Multipoint Distribution Service ("LMDS") (the "NPRM"). LMDS promises to be an exciting area of growth in the communications industry, and the Commission's flexible and expansive approach will allow for great participation and competition, as envisioned in the Telecommunications Act of 1996. DBC does, however, wish to respond to some of the comments submitted regarding the NPRM. In particular, DBC wishes to express its concern that the Commission keep in mind the interests of small companies which wish to participate in the LMDS auction and help to lead the development of the LMDS industry. These companies are at particular risk of being excluded from allocations of such large spectrum-blocks, which would be contrary to public policy in general and the Commission's stated auction objectives in particular.

I. The Commission Should Not Have Minimum or Maximum Disaggregation Standards.

The Commission seeks comment regarding whether the Commission should alter the general rule permitting disaggregation of LMDS, and establish minimum and maximum disaggregation standards. DBC joins other already-submitted comments in opposing minimum and maximum disaggregation standards. All of the potential-users of LMDS spectrum will have drastically different requirements and expectations regarding that spectrum, depending on their plans for spectrum use. Indeed, the beauty of LMDS technology is the variety of potential uses for that technology which may not now be fully appreciated. CellularVision points out in its

comments that additional and unforeseen uses for the spectrum may easily emerge over time.^{1/}

DBC echoes the belief that technology will expand the use of LMDS spectrum. The more flexibility that is encouraged, and the more concomitant entrants to the market allowed, the closer the industry will come to realizing the potential of LMDS. Small companies with few resources may be able to utilize a relatively small piece of spectrum, and these uses would be valuable to the public. DBC agrees with the comments filed by CellularVision USA, Inc., that setting minimums and maximums would reduce spectrum-use flexibility.^{2/}

II. The Commission Should Allow Combined Partitioning and Disaggregation And Should Have No Restrictions on Partitioning and Disaggregation.

A. The Commission Should Allow Combined Partitioning and Disaggregation.

The Commission proposes in its NPRM to allow combined partitioning and disaggregation. DBC supports this tentative determination. DBC agrees with comments submitted by WebCel and CellularVision that allowing this type of combination would, again, promote flexibility in LMDS use and build-out.^{3/}

Due to the large spectrum allocations for LMDS, some small companies may achieve better results by using only a small disaggregated portion of spectrum in a small partitioned geographic area. Disallowing combinations of partitioning and disaggregation could stifle involvement and investment by small companies.

^{1/} Comments of CellularVision USA, Inc., filed by Michael R. Gardner on April 21, 1997, at 10.

^{2/} Comments of CellularVision USA, Inc., at 5.

^{3/} Id. at 7; Comments of WebCel Communications, filed by Blumenfield & Cohen and Preston Gates Ellis & Rouvelas Meeds on April 21, 1997, at 6.

B. The Commission Should Not Create Partitioning and Disaggregation Ceilings.

DBC disagrees with comments submitted by Texas Instruments, Inc. ("TI"), who asserts that licensees should be forced to retain a predominant share of their spectrum when that spectrum is disaggregated or partitioned.^{4/} TI claims that such a restriction would deter speculators. The real losers in such a proposal, however, would be small businesses. Under TI's proposed rule, each BTA would have one major license-holder, and less than forty-nine percent of the BTA would be available for partition and disaggregation. Considering the enormous size of BTAs and the large allotments of spectrum that are to be granted in the LMDS proceedings, a requirement of majority-ownership of an allotment of spectrum would drastically reduce the spectrum available to small investors and would unnecessarily restrict the licensees' operating options. The Telecommunications Act of 1996 and the Commission Rules specifically seek to open the communications arena to small businesses and to encourage their entry into the market.^{5/} TI's proposal would directly contravene this purpose, reducing business opportunity for small businesses and decreasing potential innovative uses of the spectrum, to the detriment of the consumer.

Further, TI itself acknowledges that the Commission has previously considered and rejected disaggregation ceilings.^{6/} TI attempts to distinguish these cases from LMDS on the basis of the size of spectrum involved in LMDS. In fact, DBC would argue that the larger size of the spectrum makes ceilings on disaggregation more objectionable. In smaller spectrum allocations,

^{4/} Comments of Texas Instruments, Inc., filed by Wiley, Rein & Fielding on April 21, 1997, at 2.

^{5/} See, e.g., 47 U.S.C. §257; Section 309(j)(3)(D) of the Communications Act of 1934, as amended, 47 U.S.C. §309(j)(3)(D)

^{6/} See, e.g., Wireless Communications Service, GN Docket No. 96-228, FCC 97-50 (Feb 19, 1997); Commercial Mobile Radio Services, 5 Comm. Reg. (P&F) 634 (Dec. 20, 1996).

small businesses are more likely to be able to compete because the cost of a smaller allocation is commensurately smaller. For the large portions of spectrum contemplated in the upcoming LMDS auctions, small businesses would be excluded from the competitive process on a broad scale if ceilings were implemented. Large spectrum allocations incur large costs which small businesses will be in no position to meet. It is therefore even more important for the competition and encouragement of small businesses in the LMDS context that no ceilings be created.

III. The Commission Should Not Utilize Construction Requirements That Are Based Upon Independent Certification.

DBC supports the Commission's determination allowing LMDS spectrum assignors to agree with spectrum assignees to allocate construction responsibility fully to one or the other party.⁷¹ DBC disagrees with the comments submitted by CellularVision that assignors and assignees of LMDS spectrum should be individually accountable for their own construction requirements.⁸¹ Large companies with LMDS spectrum will lack, in some circumstances, incentive to disaggregate and partition. Their perspective may change if the smaller companies to whom the large companies assign spectrum assume responsibility for construction. A license-holder may become motivated to share spectrum because it would not have to meet a construction deadline for that market, and would therefore be able to re-direct its resources to its other markets. Indeed, if the Commission creates this type of incentive for large companies to share spectrum, both small businesses and the public will benefit, as more of the spectrum will be utilized, likely expediting service delivery and increasing the types of services offered.

⁷¹ NPRM at para. 417.

⁸¹ Comments of CellularVision USA, Inc. at 7.

IV. The Commission Should, As Proposed, Allow Small Businesses to Pay Installment Payments With Interest Only for the First Two Years; It Should Not Require A Uniform Up-Front Payment For All Bidders.

The Commission plans to allow small businesses, defined as those businesses with average gross revenue not exceeding \$40 million for the preceding three years, to make installment payments for licenses.^{9/} Further, the installment payments for small businesses will include only interest for the first two years. DBC encourages the Commission to consider allowing interest-only payments for a longer period for small businesses, perhaps for three or four years. However, DBC commends the Commission allowing interest-only payments generally, as it will encourage investment by small businesses.

DBC also encourages the Commission to re-think its determination regarding a uniform payments for all bidders.^{10/} DBC believes that by substantially reducing the large up-front payments which the Commission has recently required in auction proceedings, the Commission will create a more dynamic bidding environment, with more small businesses participating. DBC believes that this goal can be accomplished without necessarily creating an increased likelihood of substantially higher default rates. Many small businesses, armed with excellent ideas and alternative forms of capital, do not have the cash resources now required for participation in large auctions. They may therefore be foreclosed until partitioning and disaggregation. Such "second class" rights ought not to be the *de facto* Commission policy.

Indeed, DBC believe that large up-front payments create a bar to entry in the Commission's auction process, effectively denying access to the auction for anyone who cannot post huge up-front payments. One need only look at the wireless cable auction for evidence of

^{9/} Order, at paragraph 349.

^{10/} See, Order at paragraph 353.

this phenomenon. Small bidders in that auction kept the "big players" guessing, since no one at the auction knew where the small bidders might bid; their corporate objectives and regional preferences are not a matter of public record. The modest up-front payment in that auction encouraged wide participation by new entrants, and this entry -- of small businesses and others -- resulted in a very competitive and successful auction, in every respect.

In contrast, the Commission will remember the very recent ill-fated WCS auction, in which only a small number of bidders qualified to bid by paying the large up-front payment, and the auction created far less interest and revenue to the Federal Treasury than had been envisioned. DBC strongly encourages the Commission to re-examine its decision from the perspective of small businesses, not only in this proceeding, but in all future auction proceedings in which up-front payments may be considered.

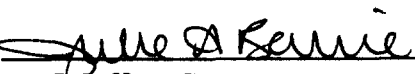
DBC is aware that one Commission concern pertaining to up-front payments is insuring that auction participants do not default on their payments. However, DBC believes that by increasing the disclosure requirements and by setting reasonable limits on the size of acquisitions once in the auction, the Commission can better balance the competing demands of encouraging designated entities to participate in auctions, without significantly increasing the incidents of payment default.

CONCLUSION

DBC hopes that the Commission will continue along the path it has begun, by approaching LMDS technology with the greatest of all possible flexibility: allowing any and all types of partitioning and disaggregation and combinations thereof, creating no limitations or minimums and maximums, and retaining assistance to small businesses wishing to enter the LMDS industry. An approach with the greatest flexibility will be the approach that is the most beneficial to small businesses, the goals of the communications industry, and to the public.

Respectfully submitted,

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